

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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WANDA JAMES SPEIGHT : CIVIL ACTION

vs. :

CAPMARK FINANCE, INC. : NO. 07-0890

WILLIAM F. ALDINGER, III :

PHILADELPHIA, PENNSYLVANIA

February 27, 2009

BEFORE HONORABLE J. CURTIS JOYNER, J.

AND A JURY

CLOSING ARGUMENT

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(The Court resumed the proceedings at 12:25 p.m., at which time the jury entered the courtroom.)

THE COURT: Good afternoon, lady and gentlemen.

When I sent you out for the break, the plaintiff had rested their case, and the defense had also rested their case. They didn't call any witnesses.

Now we're at the stage or the phase of the trial where counsel will give you their closing summation.

Initially, the plaintiff's counsel will close or sum up to you, followed by the defense counsel, and then the plaintiff has the right of a brief rebuttal argument, if they care to. All right?

I ask you to give counsel your undivided attention, and after they are finished with their arguments, I will instruct you on the law that you are to apply in the case before you. All right?

So saying, now, counsel, do you wish to close?

1 MR. SALMANSON: I do, Your Honor.

2 Lady and gentlemen of the jury, first  
3 of all, thank you, of course, for your service.  
4 I know it's been interesting sometimes, maybe  
5 tedious a lot of the time, and I'm sure if you  
6 never hear the term "risk rating" again for the  
7 rest of your life, it will be too soon.

8 Having said that, we're here for a  
9 pretty serious purpose.

10 In Ms. Speight's termination meeting,  
11 John Zurick told the truth, the whole truth and  
12 nothing but the truth.

13 What he said was, "Wanda, you've done  
14 nothing egregious."

15 Mr. McCool told the truth, the whole  
16 truth and nothing but the truth.

17 He said, "I just decided it wasn't  
18 going to work out."

19 Mr. McCool testified that he always  
20 tells the truth at their termination meetings.  
21 Remember what he said: "I decided it wasn't  
22 going to work out."

23 Now, Ms. Pickles testified yesterday  
24 that Ms. Speight hadn't violated any company  
25 policy. She couldn't say that Ms. Speight had

1     been insubordinate. Capmark can encode her  
2     termination as insubordination, a violation of  
3     company policy, or improper conduct, or, most  
4     importantly, a refusal to perform job duties.

5             Now, of course, they are going to claim  
6     that she was refusing to perform her job duties,  
7     and that's why she got terminated.

8             Remember what Mr. Finkenstaedt said.  
9     He said that if he were assigned that task, he  
10    felt he was supposed to be objecting and  
11    refusing to perform that task. Nothing happened  
12    to Mr. Finkenstaedt.

13            Ms. Speight's termination for cause  
14    wasn't for cause within the meaning of the  
15    severance policy. And while they contend that  
16    they offered her severance to be nice -- nice?

17            You heard that Ms. Pickles, as the plan  
18    administrator, was bound to the terms in the  
19    policy. She wasn't allowed to give Ms. Speight  
20    severance, if she were terminated for cause.  
21    They can only give severance if, and only if,  
22    that termination is not for cause.

23            It wasn't for cause, so it meant it  
24    couldn't have been that Ms. Speight failed to  
25    follow the lawful direction, policies, or

1 procedures of the company.

2 I suspect that Mr. Banks is going to  
3 tell you that she failed to follow the  
4 directions, but she didn't, and they determined  
5 that back at the time she was terminated.

6 If it were for cause, it meant that she  
7 failed to perform a material obligation of the  
8 company, but it wasn't for cause.

9 So we now know or we know that back  
10 then they said it wasn't for cause. She hadn't  
11 been terminated for insubordination, improper  
12 conduct, or failure to perform job duties, but  
13 that's not the way they used to tell the story.

14 Once upon a time, they wrote a fairy  
15 tale. The fairy tale was that Ms. Speight was  
16 terminated for her, quote, "unprofessional,  
17 uncooperative and disrespectful conduct."

18 Remember, that's what they said in  
19 their Answers to Interrogatories. As part of  
20 that fairy tale, Mr. Lipson testified in his  
21 deposition that Ms. Speight showed a poor  
22 attitude. The only thing he could really point  
23 to was that she tried to move half her assets  
24 into Real Estate Solutions.

25 Mr. Lipson tried to say he heard that

1 from Ms. Speight directly when, in fact, he  
2 wasn't even talking to her. Remember they had  
3 one meeting at the beginning. There's nothing  
4 to back him up. Eventually, he thought he heard  
5 that from Mr. McCool.

6 In fact, there's no testimony that  
7 Ms. Speight tried to move half the assets over  
8 to Real Estate Solutions. The only thing  
9 Ms. Speight actually recommended in regard to  
10 the movement was that some of her people go over  
11 there. She made that recommendation after  
12 Mr. McCool asked Ms. Speight for her views.

13 Mr. Lipson said in his deposition -- I  
14 read it to you this morning. Those suggestions,  
15 that was a ploy. It was disingenuous, designed  
16 to make trouble. He didn't know that Mr. McCool  
17 would get on the stand this week and say there  
18 was nothing wrong with that recommendation. It  
19 was consistent with the -- these are his words,  
20 "tenor and tone" of the discussions they were  
21 having.

22 In fact, they actually ultimately  
23 called those recommendations, according to Mr.  
24 McCool, with a few minor exceptions. Even more  
25 telling, he said he didn't even think Mr. Lipson

1 had any basis for objecting because he didn't  
2 even know the people.

3 Mr. Lipson also testified in his  
4 deposition that Ms. Speight was passive.  
5 Remember I asked him that? Passive. They  
6 decided to go with that one for awhile. In  
7 fact, they started out the trial with it, "she  
8 was indifferent," right?

9 You heard Ms. Speight. You heard her  
10 testimony for a day and a half. You heard her  
11 constant e-mails. She was not passive. She was  
12 doing exactly what she needed to do. She was  
13 shorthanded.

14 She said, "What do I do?"

15 "Go to Mr. Lauerman."

16 She immediately went to Mr. Lauerman.  
17 She got him to help her with the SBG loan  
18 portfolio, and then she went and she asked him  
19 to help her out with the Canadian loan  
20 portfolio, just like she was supposed to.

21 She was being proactive, solutions  
22 oriented, and she got what she needed to be  
23 done, or at least so she thought.

24 If there's one thing maybe, maybe, we  
25 can agree on about the May 25th e-mail is that

1 surely it isn't passive.

2 I'm sure you see what is really going  
3 on here. I respectfully suggest to you that  
4 they only came up with the idea that she was  
5 being passive after they got Ms. Speight's  
6 e-mail to Ms. Wilson.

7 Beth Wilson. Do you remember the  
8 career coach? Then they thought, "Well, if  
9 Ms. Speight thought she was indifferent, let's  
10 go with that one for awhile."

11 Well, maybe they should have talked to  
12 Bob Jones before they wrote that chapter as a  
13 fairy tale, right?

14 They tried so hard to suggest he was  
15 bias. You're getting paid for today, right,  
16 they asked him.

17 Nope, he said. I'm just here because  
18 it's the right thing to do. I'm here because I  
19 know the truth about Ms. Speight's attitude  
20 during that time period. Of all the people I  
21 helped out through transitions like this, from  
22 CEOs all the way down, she's a nine or nine and  
23 a half out of ten. And I don't give tens.

24 Unbiased observer during the time  
25 period.



1           Whatever else Ms. Speight was, in late  
2     May, she was certainly not passive.

3           She paid Mr. Jones to help her, to help  
4     her figure out the best way to get through this  
5     transition.

6           She wasn't passive. She had 140,000  
7     reasons not to be.

8           You know it, and I know it.

9           Mr. Lipson claimed he was being  
10    increasingly concerned about Ms. Speight's  
11    attitude. He talked to her in person once at  
12    the beginning of the process, and couldn't  
13    dispute Ms. Speight's testimony that, except for  
14    that group meeting shortly thereafter, he didn't  
15    even talk to her again.

16          How can you judge someone's altitude if  
17    you're not even talking to her?

18          At most, there were two incidents over  
19    a period of three days. Ms. Pickles testified  
20    in her deposition, as I mentioned, that  
21    Ms. Speight violated company policy. She was  
22    insubordinate.

23          No one else believed it then. You can  
24    see the documents. The truth is, Ms. Pickles'  
25    actions in determining that Ms. Speight was not

1 terminated for cause speaks volumes louder than  
2 even her own words.

3 Indeed, not a single individual  
4 involved in this determination was willing to  
5 back up Ms. Pickles' deposition testimony. Not  
6 Mr. Zurick. He told you there wasn't any  
7 violation of company policy. Not Mr. Lipson,  
8 not Mr. McCool. Most tellingly, not even  
9 Ms. Pickles herself.

10 She disavowed her own testimony,  
11 testimony given under oath, and she admitted to  
12 you yesterday that she didn't consider the  
13 termination to be on the basis of company  
14 policy.

15 Fairy tales continued right during the  
16 trial, right out of the gate. Mr. Banks told  
17 you in the opening that for Ms. Speight it was  
18 all about the money and tried to paint her as a  
19 malcontent because she was worried about it.

20 As Mr. Lipson told you, everybody was  
21 worried about the money. Everyone. Even  
22 Mr. Lipson himself. He told you that yesterday,  
23 remember?

24 Mr. McCool tried to tell you, again, he  
25 had concerns over many weeks leading up to

1 Ms. Speight's termination. Then he was  
2 confronted with his own internal memo, which  
3 showed that whatever concerns he had first arose  
4 at the May 23rd meeting.

5 He claimed that the purpose of the  
6 meeting wasn't to document all of his prior  
7 concerns, just the May 23rd concerns, and he  
8 just wrote the background because that didn't  
9 really mean anything. He was just trying to  
10 remind himself for context.

11 Too bad he testified under oath in his  
12 deposition -- remember, I confronted him with  
13 it -- that the memo was designed to document all  
14 of his prior concerns. The truth is, he didn't  
15 have any before May 23rd.

16 So then he had to admit that the  
17 May 12th meeting went very well. It was very  
18 productive, remember?

19 He changed history again to say, well,  
20 my real concerns were real. It was just in that  
21 time period from May 12th to May 26th, based on  
22 my nearly daily interactions with Wanda and all  
23 the back and forth we had.

24 I didn't see any e-mails before  
25 May 23rd going back and forth that would suggest

1 anything to raise a concern, and he didn't point  
2 to anything.

3 Unfortunately for him, his own calendar  
4 showed that he was on paid time off for all but  
5 three of those days.

6 Some of their misrepresentations to you  
7 were more subtle. They want you to believe that  
8 the decisions to terminate Ms. Speight was made  
9 wholly by Mr. Lipson without Mr. McCool's  
10 influence.

11 Why? Because it fits into their theory  
12 that if Mr. Lipson wanted Wanda in March,  
13 knowing her race, it wouldn't make sense that he  
14 would want to terminate her in May knowing her  
15 race.

16 You can't say the same thing for  
17 Mr. McCool, because he basically got her. He  
18 didn't have any input into her transfer.

19 So it looks better for them if  
20 Mr. Lipson says, "Mr. McCool came to me and  
21 showed me the e-mail and I called Ms. Pickles  
22 and I said fire her."

23 It would work really well for them if  
24 it fit that way.

25 I respectfully suggest to you that

1 Mr. McCool was, in part, the driving force  
2 between Ms. Speight's termination.

3 Heck, just three days earlier, he told  
4 Human Resources, "I don't want her reporting to  
5 me anymore. I want her reporting to  
6 Mr. Finkenstaedt."

7 "Sorry," they told him, "we want her  
8 reporting directly to you."

9 So he was stuck with her. And then he  
10 gets the e-mail. What's his immediate reaction?

11 He e-mails her and says, "We obviously  
12 need to talk." "We obviously need to talk."

13 They make a big deal about Wanda not  
14 picking up the phone all the time. Even though  
15 he says "We need to talk," does he pick up the  
16 phone and call Wanda? Does he arrange a meeting  
17 with her? Does he talk to her? No.

18 He takes the e-mail to Mike Lipson,  
19 whose authority he needs to fire her.

20 He goes and he says, "I want to get rid  
21 of Ms. Speight."

22 And just 14 days after she first starts  
23 officially reporting to him, Mr. Lipson takes  
24 Mr. McCool's recommendation and gets the deal  
25 done.

1 I'll assume for their sake that  
2 Mr. Lipson was the decision-maker. The story  
3 doesn't go quite so well for them either.

4 They say, "Why would we bring over  
5 Ms. Speight if we were going to discriminate  
6 against her based on her race?"

7 Of course, he wasn't just taking  
8 Ms. Speight. He was taking the entire group, a  
9 group which would lend luster and prestige to  
10 the back office, a group that contributed to the  
11 bottom line. It wasn't about taking  
12 Ms. Speight. It was about taking her team.

13 Mr. Lipson and Mr. McCool had never in  
14 their whole history at Capmark or GMACM -- they  
15 can't recall being directly responsible for ever  
16 hiring an African-American. Ever.

17 Let's talk about the May 23rd meeting.  
18 I'll call this fairy tale "The Mole Hill and the  
19 Mountain."

20 The company claims that this is one of  
21 the two primary reasons for her termination,  
22 because she "wouldn't," according to them, or is  
23 it "couldn't" answer Mr. McCool's question about  
24 her group's morale, and because she said that  
25 her opinion didn't count. I'll come back to

1       that one in a minute.

2               Her group's morale. She refused to  
3 tell him. She had just forwarded him an e-mail  
4 a couple days before saying "Chuck Mathews  
5 resigned. We got concerns about morale."

6               She had told him about the morale  
7 before. The truth of the matter is, she told  
8 him that because at that point she wasn't sure  
9 what the answer was. She didn't know, she said.

10              "I thought Chuck was happy and now he's  
11 resigned. I can't answer your question, Mark.  
12 I don't know. You're going to have to go ask  
13 them."

14              But, of course, he interpreted it a  
15 completely different way.

16              The May 23rd meeting is a reason for  
17 her termination; that's what they said before as  
18 one of the reasons why she was terminated.

19              But even they admit that Human  
20 Resources was going to get involved as a result  
21 of the May 23rd meeting, not because she was  
22 going to be disciplined, but because they wanted  
23 to figure out why she was apparently unhappy and  
24 tell her again how much they valued her.

25              This wasn't a yellow card event. He's

1 talking with a coach on the sidelines. Let's  
2 get back in the game, figure out what's going  
3 on.

4 Now the e-mail. You've heard  
5 Mr. Finkenstaedt say that Mr. McCool told  
6 Ms. Speight at the May 23rd meeting, "Wanda,  
7 it's not true that your opinion doesn't count.  
8 Please give it to me. I value your opinion. I  
9 want your opinion. Don't be passive. Be  
10 proactive. You got a problem, deal with it.  
11 Tell me." Unless, of course, I use it to get  
12 you fired.

13 And I respectfully suggest to you that  
14 if Ms. Speight was not black, this e-mail would  
15 not have gotten her fired.

16 Here's some things for you to consider  
17 in that regard.

18 One reason they have to make the e-mail  
19 insubordinate is because if Wanda were just  
20 terminated for her attitude, as I told you, as  
21 they actually told her in her termination  
22 meeting, then those members of the jury who can  
23 remember the words of Ricky Ricardo, "You got  
24 some explaining to do."

25 Because they otherwise can't explain



1 why Bryan Pollack, the white manager also  
2 terminated by Mr. McCool, first got a warning  
3 and an opportunity to tell his side of the story  
4 and a chance to continue to play in the game,  
5 not only through the end of regulation, the 30  
6 days, but into overtime before he finally found  
7 out. They had to try to make Ms. Speight's  
8 infractions not comparable to Mr. Pollack  
9 because otherwise it's clear that she was held  
10 to a different standard than he was, a different  
11 standard between her and a white employee.

12 Another reason that you can conclude  
13 that maybe race had something to do with it or  
14 that race did have something to do with it is  
15 that they didn't follow their own policies for  
16 termination. Those policies apply to all  
17 employees.

18 That's what the policy says. And they  
19 exist for the express purpose to insure  
20 fairness. That means treating similarly  
21 situated people the same. You can't have  
22 fairness without equality.

23 Whatever you want to call those  
24 policies, guidance, guidelines, policies, they  
25 are the standard operating procedures for

1 quality control in Human Resources. In this  
2 case, quality control translates to equality  
3 control.

4 And they know they didn't follow their  
5 policies. So what do they say? "These are just  
6 guidelines." Or they say, "Oh, they apply to  
7 all employees." But they really don't.

8 Or my personal favorite, "Yeah, sure,  
9 we followed the policy. It says we have to hear  
10 her side of the story. Yeah, we did that, right  
11 after we fired her."

12 Sometimes, folks, explanations are so  
13 implausible that you have to believe something  
14 else is going on.

15 But the real proof is the way they  
16 interpreted the e-mail. I tried to find my  
17 junior detective kit last night. Remember  
18 those? Have them as a kid? One of the tricks  
19 was writing in invisible ink. I think you put  
20 lemon juice on it and held it up to the light.

21 Then you saw the words you couldn't see  
22 before, words like, "I'm doing this with the  
23 intent of embarrassing my boss," which is what  
24 Mr. Banks said in his opening. Words like, "I'm  
25 refusing to do what my boss is telling me to

1 do," as opposed to "I can't be competent."  
2 Words like, "Sorry for the non-existent  
3 miscommunications." And when you make a  
4 reasonable suggestion that moving your people  
5 into another place is really just to promote  
6 trouble.

7 Mr. Banks is right. I told you at the  
8 beginning, a company acts through its people.  
9 Companies don't have prejudices, people do.

10 Wanda Speight had no reason to complain  
11 about race discrimination until she began to  
12 work for people with prejudice.

13 Of course, she didn't complain about  
14 race discrimination before she got fired. Why  
15 should she? It's not like people wear prejudice  
16 on their sleeve. They tell you that they value  
17 you, and they tell you that right up until the  
18 moment that they terminate you.

19 Mr. McCool and Mr. Lipson showed you  
20 their prejudice. Prejudice is not an easy word,  
21 and it's not easy to accuse someone of it.

22 Prejudice, it means to prejudge, right?  
23 In the context of discrimination, it means to  
24 prejudge someone based on assumptions or  
25 stereotypes about them.

1           Mr. Hohenleitner didn't prejudge  
2       Ms. Speight. He knew her. He had worked with  
3       her. He thought the risk rating e-mail was  
4       okay. Better than okay. He knew that she was  
5       doing what she had always done and for what she  
6       had been amply rewarded, fostering an excellent  
7       working relationship with credit, just like they  
8       said in her evaluation, keeping him in the loop,  
9       shooting straight.

10           He had been accounting for her for a  
11       long time, and he was surprised that she got  
12       fired over that e-mail. But Mr. Lipson  
13       certainly prejudged her and so did Mr. McCool,  
14       and you can easily, easily infer that they did  
15       it based on a racial stereotype.

16           You can call it the angry black woman.  
17       You can call it the black woman with attitude,  
18       because if you believe in that stereotype,  
19       their interpretation of the e-mail, a sarcastic,  
20       angry, uppity, defiant, disobedient  
21       interpretation of that e-mail makes perfect  
22       sense. What else did they have to go on?

23           Mr. Lipson admitted that he didn't know  
24       much about Ms. Speight, except for her skin  
25       color. He didn't know about her background, her

1 preCapmark history, her advanced degrees, her  
2 performance evaluation, or even despite his  
3 attempts to suggest otherwise, her performance  
4 since she had -- prior to her joining his group  
5 or even actually after.

6 It makes sense with Mr. McCool, too, to  
7 whom she had been formally reporting for all of  
8 two days. He admitted that he didn't even have  
9 a sense of what her reputation was within the  
10 company. So what else did he have to go on?

11 If you believe in this stereotype, then  
12 everything they do makes sense. You don't need  
13 to hear Ms. Speight's side of the story, because  
14 her behavior is inbred. No point in counseling  
15 an angry black woman because she's just going to  
16 be angry, if you believe in the stereotype and  
17 you read her e-mail exactly the way they did on  
18 May 26th, 2006, the day they acted on the  
19 prejudice.

20 When they got caught, they changed  
21 their story, again and again and again, to the  
22 point that, during this trial, I went line by  
23 line over that e-mail with Mr. McCool, and he  
24 could hardly even tell you what was wrong with  
25 it. Because unless you're reading the e-mail

1 with a prejudicial eye, there really isn't  
2 anything wrong with it.

3 She was expressing statements of fact.  
4 She was apologizing for the obvious  
5 communications breakdown. She was even  
6 apologizing on behalf of everybody. You cannot  
7 read that e-mail string without believing that  
8 there is a communications breakdown somewhere  
9 along the line.

10 She reminds them again where the risk  
11 ratings are and what was happening. She  
12 expresses her honest belief -- nobody says it's  
13 disingenuous -- that if she's required to do the  
14 risk ratings, she can't have confidence that  
15 they are going to be right.

16 They are trying to say, well, she had  
17 these loans all the time. But she didn't. The  
18 SBG orphan loan had gone to Mr. Lauerman. Right  
19 up until the morning of May 22nd or whenever  
20 that e-mail string was, the Canadian loan  
21 portfolio loan was in Mr. Lauerman's group as  
22 well.

23 They said they didn't know that. "I  
24 didn't realize that." Well, it's right there in  
25 black and white in the e-mail. Did you read it,

1 or did you rush to judgment?

2 We're asking for a lot of damages here,  
3 compensatory damages for Ms. Speight's  
4 devastating emotional harm, to which Calvin  
5 testified this morning; Ms. Speight's financial  
6 losses.

7 Mr. Banks spent a lot of time this  
8 morning suggesting to you that the company is in  
9 bad financial shape, a big loss for the year, as  
10 if Ms. Speight shouldn't get money. But despite  
11 that loss, they still paid bonuses last week,  
12 didn't they? Why should you assume that  
13 Ms. Speight wouldn't have shared in that pie.

14 And then punitive damages for Capmark's  
15 new antidiscrimination laws. They didn't do  
16 anything to make sure that they were complying  
17 with them; in fact, they completely disregarded  
18 them and with malice with which they treated  
19 Ms. Speight.

20 There's one last thing, and I think  
21 you're going to be surprised by what I'm about  
22 to tell you. I want you to believe Mr. Lipson.  
23 That's right.

24 Mr. Lipson told you that all these  
25 negative things he was hearing about Mr. McCool

1 didn't make any sense to him. He's right. They  
2 don't make sense then. They didn't make sense  
3 then, unless, of course, Mr. McCool was feeding  
4 him information that was biased by prejudice.

5 They didn't make sense to Mr. Lipson  
6 then, and, by the way, of course, he never  
7 questioned Mr. McCool. That just doesn't make  
8 any sense to me.

9 But if they weren't making any sense to  
10 Mr. Lipson then, then why in the world should  
11 they make any sense to you now?

12 Their story is so inherently  
13 implausible, that I want you to agree with  
14 Mr. Lipson. Their story doesn't make sense.

15 The only plausible explanation is that  
16 Ms. Speight was not fired wholly because of the  
17 content of the character or because of what she  
18 did, but because of the color of her skin.

19 Thank you.

20 THE COURT: Thank you, counsel.

21 Now, Mr. Banks.

22 MR. BANKS: Thank you, Judge Joyner.

23 May I move the easel up here in case I need to  
24 use it?

25 THE COURT: Surely, Mr. Banks.



1 MR. BANKS: Okay. So Mr. Salmanson  
2 said let's think about this e-mail, right, and  
3 let's pretend for a moment that maybe Lipson and  
4 McCool and Pickles had stereotypes in their mind  
5 the way they interpreted it. That's what he was  
6 saying to you.

7 Let's focus on what Ms. Speight said.  
8 Can I read to you for just one minute -- you've  
9 heard it before, what Ms. Speight said she meant  
10 in her e-mail? These are her words. This is  
11 her testimony in this courtroom on that stand.

12 I asked her about her comment to  
13 Mr. Hohenleitner, the client at the end of the  
14 e-mail.

15 I said, "So you're telling him,"  
16 Hohenleitner, "if you did what McCool told you  
17 to do, he," Hohenleitner, "risked having  
18 inaccurate and indefensible risk ratings?"

19 Her answer, I quote, "That is what I  
20 told him."

21 That's what she meant. This isn't just  
22 what Lipson interpreted. That's what  
23 Ms. Speight meant.

24 Let's make this really simple for a  
25 moment, okay?

1           Suppose you take your car in for  
2     service. You need new brakes. You take it into  
3     the shop, and the mechanic is there with you,  
4     the person doing the work. All right?

5           You say to the mechanic, "I need new  
6     brakes, and I'd like to get them by 2:00 this  
7     afternoon."

8           And the manager is standing there with  
9     the mechanic. The mechanic looks up and says,  
10    "Oh, sir, I'm not doing that. But if my boss  
11    makes me do it, I can't have confidence that  
12    you're going to get good brakes. Your car may  
13    crash."

14          Now, think about that. You, this  
15    customer, coming in, in that circumstance,  
16    suppose the manager says, "Look, don't worry  
17    about it. I'm going to talk to him. I'm going  
18    to find out what he meant, and I'm going to give  
19    him a 30-day warning."

20          Do you want him to do your brakes? If  
21    you're the manager in that circumstance, are you  
22    going to send out that mechanic in that  
23    circumstance to do the brake job after he said,  
24    "Look, I can't get it done and if they make me  
25    get it done, I don't have confidence that the

1 car won't crash"?

2 I mean, let's be serious because that's  
3 what happened here with Ms. Speight. That's  
4 exactly what happened. She said, "I can't do  
5 it. I can't get it done. I won't get it done."

6 Well, can we go back for a moment to  
7 Monday, when we picked the jury on Monday, we  
8 had a big group of people out there in the jury  
9 panel, and I asked all the jurors some  
10 questions. There's a reason we ended up with  
11 you people, in part. Part of it was because you  
12 were early in the order. But there were some  
13 people who were early in the order who didn't  
14 end up on the jury.

15 But the most important thing was, I  
16 asked a critical question. I said, "Can you  
17 decide the question before you, the one the  
18 judge will ask, on the basis of the evidence,  
19 the evidence alone, and that's the question:  
20 Was Wanda Speight terminated because of her  
21 race?"

22 That's the only real question before  
23 you. Was she terminated because of her race?

24 Now, let me just take a look at  
25 something here. This is the question. You're

1 going to get it in typed form, rather than my  
2 chicken scratch on this easel.

3 But this is Question Number 1 that  
4 you're going to get that Judge Joyner will hand  
5 to you, or someone in the courtroom will give to  
6 you, probably his assistant, after the judge  
7 instructs you.

8 The question is: "Do you find that  
9 Ms. Speight has proved by a preponderance of the  
10 evidence that her race was a determinative  
11 factor in Capmark's decision to terminate her  
12 employment? Yes or no."

13 That's the question: Has she proved  
14 race discrimination, was there race  
15 discrimination? You know the answer to that.  
16 Of course not.

17 There are a ton of pieces of evidence  
18 in this case, but you'll also get instructions  
19 from Judge Joyner on what the law is to help you  
20 answer that question.

21 Judge Joyner has told you what his  
22 instruction will be. It's a form of  
23 instructions that the courts use all the time.

24 He will tell you that in determining  
25 whether there was discrimination, you may not

1 question Capmark's business judgment. You  
2 cannot find intentional discrimination, simply  
3 because you disagree with the business judgment  
4 of Capmark or believe it is harsh or  
5 unreasonable.

6 You are not to consider Capmark's  
7 wisdom. However, you may consider whether  
8 Capmark's reason is merely a cover-up for  
9 discrimination. That's the question. Not that  
10 they get it right.

11 The question is: Was there race  
12 discrimination? And to answer that you need  
13 look no further than the May 25th e-mail from  
14 Ms. Speight, the one where I just read to you  
15 her deposition testimony about it.

16 She admitted several times. She said  
17 in the e-mail, "I'm not doing what my boss told  
18 me to do."

19 You know, there was some confusion  
20 earlier in the e-mail trail, but she said that  
21 McCool's instruction was clear as a bell. She  
22 understood it.

23 He said, "Asset Management will do  
24 this."

25 She said, "No, not me, not my group."

1 She then went on to say, "And if you make me do  
2 it, I can't have confidence that it will be done  
3 well."

4 That's why she was terminated. So  
5 where is the evidence of race discrimination?

6 What's the basis for this  
7 extraordinarily serious allegation? I told you  
8 in my opening -- and I think Mr. Salmanson has  
9 acknowledged -- this isn't Capmark, some  
10 corporation, being accused. It's people. This  
11 is a really serious accusation against people.

12 Let's not mince words here. The  
13 accusation here is that Linda Pickles is a  
14 racist, and that she's lying on the witness  
15 stand; that Michael Lipson and Mark McCool are  
16 racists, and that they lied on the witness  
17 stand.

18 I don't know what their contentions are  
19 about Joe Hohenleitner and Ned Finkenstaedt and  
20 the others. That is a serious accusation. It  
21 makes me shudder, because the evidence in this  
22 case shows that that accusation is not only  
23 inflammatory, but it is outrageous in light of  
24 what Ms. Speight did to get herself fired.

25 The evidence really isn't in dispute on

1 everything that's important and material, so  
2 let's start at the beginning, all right?

3 The beginning, meaning 2006.

4 Mr. Lipson knew Ms. Speight's race; he knew it  
5 quite well; he knew who she was, and he wanted  
6 her in the group. Any real dispute about that?  
7 He brought her into the group, and McCool knew  
8 her race.

9 In fact, when Ms. Speight submitted her  
10 initial recommendations, if you remember, she  
11 wrote a preliminary recommendation saying, "I'd  
12 like to go into a different group. I'd like to  
13 go into Mr. Carp's group with half my people."  
14 That's Real Estate Solutions.

15 Mr. McCool said, "No, no, no. I'd like  
16 to keep you in my group. I want you hear  
17 because I, like Mr. Lipson, believe that you are  
18 a good manager, and you can do good things from  
19 my group."

20 Does that tell you that he had a  
21 stereotype in his mind about Ms. Speight, or  
22 that he thought that she could do the job? They  
23 thought they were getting an excellent manager.

24 The problem was -- and Ms. Speight had  
25 been a good manager. Take my auto mechanic on

1 the brake job. Maybe he had done great jobs on  
2 brakes for five years. The question was: What  
3 happened when she got there?

4 I don't know exactly why Ms. Speight  
5 was so unhappy when she moved into servicing.  
6 Maybe it was the money. Maybe, as she said, she  
7 didn't like her new manager, Lipson, as she  
8 wrote in her e-mail.

9 But this is what we know again. This  
10 case really always comes down to her words, her  
11 e-mail, her words at the May 23rd meeting, and  
12 her other e-mails. We've seen it again and  
13 again.

14 McCool and Lipson did not know that on  
15 April 22nd, nine days before Speight moved to  
16 servicing, she wrote that, "I am somewhat  
17 indifferent about GMAC CM, about the company."  
18 They didn't know that.

19 They didn't know that she wrote that  
20 she was -- that her management didn't excite  
21 her. They had no vision in good communications.

22 How could they know? She told her  
23 counselor that, but not them. It speaks volumes  
24 now.

25 They didn't know that Ms. Speight wrote



1 to Bob Jones on May 3rd, two days after she came  
2 into the department saying, "Titles,  
3 organization, that stuff didn't matter. I am  
4 more concerned about money."

5 Yeah, she had a right to be concerned  
6 about money, as long as she was doing her job  
7 well.

8 They didn't know that in that same  
9 e-mail Ms. Speight wrote that because of her  
10 concerns, because she was so upset, she was  
11 going to deal with that by taking a, quote,  
12 "detached perspective."

13 "Detached." They didn't know that she  
14 wrote to Ms. Jones that she was going to  
15 pretend. That's how she was going to deal with  
16 her concerns. She wrote, "Publicly, I will  
17 continue to say I am committed to seeing the  
18 transition through." "I'll pretend."

19 The next sentence, all she talks about  
20 are what the packages are, what the severance  
21 packages are. She was entitled to have those  
22 views. She was entitled to be concerned.  
23 There's no problem with that.

24 As long as it didn't translate into  
25 what she did at work. If she was detached and

1 indifferent and just pretending and that carried  
2 through in her job, it's a problem because she's  
3 a senior manager with important  
4 responsibilities.

5 McCool and Lipson saw it before  
6 May 23rd. In fact, Mr. Lipson had been talking  
7 to Ms. Pickles about it. She just wasn't  
8 proactive. Detached isn't a good way to be a  
9 senior leader. Indifferent isn't a good way to  
10 be a manager.

11 But we all know that what happened on  
12 May 23rd now isn't disputed. She came into a  
13 meeting. Ms. Speight came into a meeting with  
14 her boss McCool and two others, Finkenstaedt and  
15 Dooley. We heard from Finkenstaedt. We heard  
16 from Ms. Speight. We heard from McCool.  
17 Everybody seems to agree.

18 Ms. Speight was asked: "Tell me about  
19 the morale of your group. Tell me about what  
20 people are thinking."

21 Not once, not twice, at least three  
22 times, as Mr. McCool wrote in his memo, she  
23 said, "I don't know. You'll have to ask them."

24 Not "Let me share some of the  
25 concerns."

1 Not, "You know what? That's a good  
2 question. How about if we go talk to them. I'm  
3 their manager and I'll go and talk to them and  
4 find out. Get back to you in a day."

5 She wrote, "I don't know. You'd have  
6 to ask them."

7 And here's how we know that this is an  
8 attitude problem, not just an honest response,  
9 because on May 3rd, Ms. Speight had written to  
10 Bob Jones, her counselor. She wrote about the  
11 frustrations that her people had. She had a  
12 whole section in her e-mails talking about  
13 employee morale issues, how people were  
14 frustrated, how people were concerned.

15 Do you find it a little odd that she  
16 would write that to her outside counselor? But  
17 when her boss said, "So how are the people  
18 doing," she'd say, "I don't know. You'd have to  
19 ask them."

20 Is that indifferent? Is it detached?  
21 I don't know. Is it hostile? Is it  
22 uncooperative?

23 Then it got worse. Towards the end of  
24 the meeting, as it moved on, Mr. McCool said to  
25 Ms. Speight, "I'd like to know your opinion on

1 something."

2 Nobody even remembered exactly what it  
3 was.

4 She crossed her arms and said, "You  
5 know my opinion doesn't count so I don't have  
6 one."

7 Remember Finkenstaedt up there?  
8 Finkenstaedt said he was shocked. He couldn't  
9 believe she responded that way. And, McCool, to  
10 his credit, didn't just get angry.

11 He said to her several times, "No, no,  
12 no, Wanda, I really do care. I want your  
13 opinion. You're a senior manager. Please tell  
14 me your opinion."

15 And she said, again and again, "My  
16 opinion didn't count so I don't have one."

17 Indifferent? Attached? Detached?  
18 Yeah, to say the least.

19 And this is how you know that her race  
20 had nothing to do with anything, because not  
21 only had McCool fought to keep her in the group,  
22 not only had Lipson brought her in, but at that  
23 moment McCool didn't run out to HR and say, I've  
24 got a woman -- what did Mr. Salmanson say -- an  
25 angry black woman? He didn't run out and say

1 let's fire her.

2 She had mouthed off to him at a meeting  
3 with others. She had refused to answer her  
4 questions, even as to things that she had  
5 complained to her counselor about it.

6 And what was his response? He got HR  
7 involved so they could work with her. McCool's  
8 goal was to make it work, not to get rid of a  
9 black woman, but to make it work. The plan was  
10 to counsel her.

11 He wrote a memo up, and they had a  
12 plan -- this is before they knew about the  
13 May 25th e-mail.

14 He wrote in his memo, "It is my  
15 intention to reiterate to Ms. Speight that we  
16 believe in her abilities, which is why we  
17 offered her the position to begin with."

18 He didn't want to get rid of her. He  
19 wanted to make it work because everybody thought  
20 she had the talent, and they were on the way to  
21 making it work or trying to make it work if she  
22 could become attached rather than detached, and  
23 committed rather than indifferent, but sadly  
24 Ms. Speight crossed the line.

25 She stepped way out of bounds, because

1 on May 25th, just two days after the meeting,  
2 she ratcheted up there. I had it up on that  
3 house-size board. I'm not going to put it up  
4 there again.

5 I mean, if you want it, when you go  
6 back to deliberate, you can ask Judge Joyner and  
7 he'll send back any exhibit you want. But you  
8 know what it says. I told you what it says.  
9 You heard Ms. Speight admit what it says.

10 Yes, was there some confusion leading  
11 up to Mr. McCool's e-mail? A little bit. He  
12 cleared it up.

13 He said, "this is what you're supposed  
14 to do."

15 And we know what Ms. Speight's response  
16 is. Her response is, if you make me put those  
17 brakes on your car, I can't be confident that  
18 it's not going to crash. And she told that to  
19 the customer, to the internal client.

20 Think about what she could have done if  
21 she really wanted to make it work. She could  
22 have, instead of writing that e-mail 40 minutes  
23 after she got it -- I assume it took some time  
24 to type it -- she could have tried to find  
25 people to help her.

1           It was the Friday before Memorial Day.  
2       She could have made some calls. She could have  
3       sent some e-mails. She could have called or  
4       e-mailed McCool and said, "Mark, I need to talk  
5       to you. Let's talk about this. I don't think  
6       your suggestion is going to work."

7           She could have contacted Mike Lipson or  
8       tried to contact Mike Lipson to say, "Look,  
9       Mr. Lipson, I'm responsible for these credit  
10      ratings, and I think Mark McCool is giving me  
11      something that I shouldn't be doing."

12          You heard Lipson say she'd come to my  
13      office and say that. He had talked to her  
14      before. She chose her path.

15          With 12 days to get the risk ratings  
16      done, her response was, I can't be confident the  
17      brakes will work.

18          She told eight people, including the  
19      three clients she was servicing -- I am so glad  
20      they brought in Joe Hohenleitner, the client.

21          Mr. Hohenleitner was one of their last  
22      witnesses. He was up on the stand. He clearly  
23      had no axe to grind, and he had a very high  
24      regard for Wanda Speight. Unlike some of the  
25      others, he worked with her a lot before this.

1 He nailed it down completely. He followed up on  
2 what McCool said.

3 Just think about this for a moment.  
4 The e-mail from Wanda Speight goes out 5:33 p.m.  
5 on the Friday before Memorial Day -- excuse me,  
6 the Thursday before Memorial Day. I misspoke.  
7 That's "the brakes won't work" e-mail. Okay?

8 McCool sees it the next day. Lipson  
9 sees it the next morning. Ms. Speight said that  
10 she was terminated at about 2:30 in the  
11 afternoon, or sometime in the afternoon, and  
12 also in that afternoon Irwin is told, Don Irwin,  
13 You're taking over for Wanda Speight. You're  
14 the new guy who has to fix the brakes.

15 He doesn't come in and say, I can't do  
16 this. The brakes are going to work.

17 What does he do? He immediately goes  
18 about getting it done. What Ms. Speight was  
19 supposed to do and able to do, he finds the  
20 people to do it, he marshals all his resources,  
21 and he gets it done. Hohenleitner told us.

22 I asked Mr. Hohenleitner, I said,  
23 "Mr. Irwin's first day on the job really was  
24 Tuesday, May 30th."

25 That's nine days before the risk



1 ratings were due, a full ten days after  
2 Ms. Speight learned that Mr. Lauerman wasn't  
3 doing them.

4 Mr. Hohenleitner said, "We got them  
5 done just fine. The risk ratings were perfect."

6 Mr. Hohenleitner was so pleased with  
7 the job that Don Irwin did, he actually went out  
8 of his way and wrote a memo to the head of  
9 credit saying, to Mr. Ballard, saying, "This was  
10 done perfectly. Couldn't have been done any  
11 better."

12 He got the brakes fixed, and the car  
13 ran. Had Ms. Speight not been so detached and  
14 indifferent and frustrated, she could have done  
15 that, too.

16 It's really, really, really easy to see  
17 why Ms. Pickles approved this termination  
18 decision. This wasn't like Bryan Pollack, a  
19 lower level manager, who had been inappropriate  
20 in his dealings with some people who reported to  
21 Pollack.

22 As we've heard, Pollack never sounded  
23 off to anyone above him or to a client. He had  
24 a management style problem.

25 McCool and Pickles and everyone

1 understood why an action plan wouldn't work.  
2 You can't take a senior manager who has to do  
3 risk ratings in 12 days and who said, "I won't  
4 do them or I'll do them badly," and give that  
5 person a 30-day action plan.

6 The risk ratings are too darn  
7 important. They had to get done, and they had  
8 to get right. That's what Lipson said. Lipson  
9 made it very clear.

10 "Look, I'm not trying to punish Wanda  
11 Speight. I need someone who can do these risk  
12 ratings timely and well. I had to make a  
13 change."

14 A \$600,000 a year executive has to get  
15 things done. There wasn't time to give her an  
16 action plan. And they didn't need to hear what  
17 she had to say about it because her words were  
18 already clear. Her words were on the e-mail  
19 itself. They were clear as day.

20 She might be able to say why she wrote  
21 it, but no matter why she wrote it, you cannot  
22 put her out there, then, in front of the client  
23 as the one to sign off and approve these risk  
24 ratings after she said, "if you make me do it,  
25 I'll mess it up. It's not going to be done in a

1 way that is going to be reliable."

2 That's why it's that e-mail that got  
3 her fired. Her words were clear, her conduct  
4 was clear, and Lipson knew what he had to do.

5 I'm not saying Wanda Speight is a bad  
6 person. I have no reason to believe that she is  
7 a bad person, but neither was Lipson and neither  
8 was Pickles and neither was McCool.

9 Lipson and Pickles wanted Wanda Speight  
10 to get a severance package. I think that was a  
11 good thing to do. I hope you do, too. Is there  
12 something wrong with saying, "Look, she has  
13 shown she can't function as the head of this  
14 group, but we're going to create a situation  
15 where she can qualify for a severance package,  
16 if she wants it."

17 Is there anything wrong with that?  
18 Does that say that's race discrimination?

19 That shows that they weren't out to get  
20 her. They were trying to run the business.  
21 They needed a leader like Don Irwin who could  
22 get it done.

23 It's sad, but there's zero evidence of  
24 discrimination. There's nothing that would make  
25 you check this yes.

1 I want to go back to something that I  
2 asked Ms. Speight, and I want to tie it up a  
3 little bit with something that her husband said  
4 today, who came here, and also seems like a very  
5 decent man.

6 I asked Ms. Speight, "You're writing  
7 all these e-mails to your career counselors,  
8 trying to get help from them, trying to educate  
9 them on what's going on at Capmark. You never  
10 said, I think they are discriminating against me  
11 because of my race, not once."

12 Wouldn't you want your career counselor  
13 to know that that's the obstacle you faced, if  
14 you really believed that you faced that  
15 obstacle?

16 She wrote her log, her lengthy log,  
17 that Exhibit D-30, a long notebook. Not once  
18 did she say "I think I'm being treated badly  
19 because of my race."

20 Do you know what else is interesting?  
21 Calvin Speight, her husband, got up and he's  
22 been here throughout the trial and attentive as  
23 you have been. He heard me ask those questions  
24 of Ms. Speight.

25 He heard me ask, "Did you ever tell

1 anyone at Capmark, your career counselors, your  
2 bosses, Human Resources, your own log, that you  
3 thought this was discrimination, anyone in the  
4 universe, until you went to a lawyer to file a  
5 lawsuit?"

6 She said no.

7 Not even her husband testified that  
8 Ms. Speight ever complained to him or suggested  
9 to him that she was discriminated against. Even  
10 after she was fired, even when she went home and  
11 was so upset, she didn't even say that to him.

12 Now Ms. Speight is asking you to award  
13 her one or two or three or \$4 million for a  
14 wholly inappropriate e-mail that she wrote.  
15 That's a lawsuit over money, so I guess we  
16 shouldn't be surprised that they pay an expert  
17 to come in and put some big numbers up on an  
18 easel. It's not shocking in this day and age.

19 But in the end, it's not about that.  
20 It keeps coming back to the same question. We  
21 know the answer. It's the answer to this  
22 question.

23 Look, it's time for me to wrap-up. As  
24 Judge Joyner said, Mr. Salmanson gets to go  
25 first and then I get to go and he gets to go

1 again, Mr. Salmanson does.

2 You may be asking yourself, is that  
3 fair? How come he gets to go first and last and  
4 I only get to go once? It is fair. I have no  
5 problem with it.

6 Bear in mind, I don't get to come back  
7 again, no matter what he says. Even if he says  
8 something that has no relationship to the  
9 evidence or logic, I can't get up and say he's  
10 wrong. I have to trust your memories and your  
11 logic and your wisdom.

12 But the reason he gets to go twice is  
13 because the question here is: Do you find that  
14 Ms. Speight has proved by a preponderance of the  
15 evidence that her race was a determinative  
16 factor in the termination decision? In other  
17 words, has she proven to you that her race was  
18 the reason why she was terminated?

19 He gets to go first and last because he  
20 has a heavy burden.

21 I'll just bring you back to one point I  
22 said on day one. I asked you another question.  
23 Not only could you limit your facts to the  
24 analysis in this question, but I asked every  
25 potential juror in that box.

1 I said, "Do you understand that merely  
2 because someone makes an accusation of  
3 discrimination, that doesn't make it true? Is  
4 there anyone here who thinks that just because  
5 someone accuses someone of discrimination it's  
6 likely or necessarily true?"

7 Not one of you raised your hands,  
8 because you know that's not the case. Anyone  
9 can make an accusation, even if the facts don't  
10 support it.

11 So now I have to pass it over to  
12 Mr. Salmanson, and it's just about time for you  
13 to do your duty.

14 I'm going to ask you to do what you  
15 were sworn to do, which is to follow the judge's  
16 instructions on the law -- only Judge Joyner can  
17 tell you what the law is, and then to remember  
18 the facts that you heard and apply the wisdom  
19 that you bring as jurors.

20 You've been remarkably attentive  
21 throughout this trial. You've heard about risk  
22 ratings and Canadian portfolios and  
23 Hohenleitners and Finkenstaedts and places and  
24 names. It was amazing to me that you guys were  
25 really tuned in.

1           We're almost there. I want you to take  
2           as much time as you need to deliberate and  
3           understand all the facts, but I hope you agree  
4           with me right now that you know exactly what you  
5           need to check off "No" here.

6           "No," that there are no facts  
7           suggesting discrimination, and that it was  
8           Ms. Speight's words and actions alone that  
9           resulted in her termination.

10           I thank you for your attentiveness and  
11           for your service to this Court. The parties  
12           thank you. I'm sure the judge will.

13           Have a good weekend, folks.

14           THE COURT: Thank you, Mr. Banks.

15           MR. BANKS: Thank you, Judge Joyner.

16           THE COURT: Mr. Salmanson.

17           MR. SALMANSON: Just to be clear, the  
18           question isn't the act by race alone. The  
19           question is whether race was a determinative  
20           factor. In other words, if she weren't black,  
21           would she not have been fired? It doesn't mean  
22           that something didn't happen. Something  
23           happened.

24           The question is, what did they do as a  
25           result of that event? That's the question.



1           A man walks into a car shop. Says,  
2       "Can you fix my brakes?"

3           I said, "Of course, I can fix your  
4       brakes."

5           "Good, because here's my kid's little  
6       plastic tool. Go ahead and fix the brakes."

7           He said, "I can't fix your brakes with  
8       your little kid's plastic tools. I don't have  
9       the tools. But I can fix the brakes if I go  
10      back into the shop, and I get the right tools to  
11      get them done. Do you want to give me the  
12      tools? I'll get it done.

13          In fact, didn't you ask me to do it  
14      with the right tools and I went and I got them.  
15      You took those tools away from me. I can't fix  
16      the brakes if you give me a piece of plastic to  
17      do it with. Give me the people; I'll fix the  
18      brakes. Give me the people; I'll do the risk  
19      ratings. But if you want me to fix the brakes  
20      with your plastic wrench, I can't be confident  
21      those brakes are going to work."

22          That's what she said. I love that  
23      analogy.

24          Mr. Banks spent a fair portion of his  
25      closing talking to you about facts that neither

1 Mr. McCool nor Mr. Lipson had any idea about.  
2 They couldn't have acted based on what  
3 Ms. Speight was writing because they didn't know  
4 about it. They couldn't have acted based on  
5 what happened after she was terminated because  
6 that hadn't happened yet.

7 They had to act based on what they knew  
8 on May 25th, no more, no less. Of course, what  
9 Mr. Banks didn't tell you was that after  
10 Ms. Speight had been saying for weeks, "I need  
11 people, help me out, oh, I've got these people,  
12 I've got Mr. Lauerman's people."

13 May 4th, she says, "I've been trying to  
14 tell you for 30 days. I don't have the people  
15 to get this done. Tell me, again, what's the  
16 plan."

17 There was no evidence that she was told  
18 the plan. Within how many hours of her  
19 termination? Effective immediately. We've got  
20 four new people assigned.

21 She had been asking for weeks, months,  
22 "Can you give me some more people to be  
23 assigned?" It took them, what, three hours to  
24 give four of their best asset managers assigned?  
25 Not maybe for those risk ratings, but going

1 forward, exactly what she wanted.

2 She thought she had the risk ratings  
3 covered until May 22nd. She thought she had  
4 people to help her with the SBG loan portfolio,  
5 and she thought she had people cover for the  
6 Canadian loan portfolio.

7 She wasn't refusing to do the job.  
8 They claimed, "Oh, that's really what she said  
9 in her deposition." She wasn't refusing. They  
10 didn't read the e-mail that way at the time,  
11 even if she was thinking that way. They didn't  
12 read the e-mail.

13 Ms. Pickles said, "I didn't read the  
14 e-mail that way. I didn't read it as  
15 insubordination. I didn't read it as refusal to  
16 do the job."

17 I read it as, "If you're making me do  
18 the job, I don't have confidence in the job."

19 And then they say, "Oh, and, by the  
20 way, we weren't making her do the job."

21 Remember? That's part of what they  
22 complained about in the e-mail.

23 She said, "If I am being told by  
24 Capmark to risk rate those loans, I can't be  
25 competent."

1           Yeah. What they said was, "This was  
2           incredibly inappropriate, because we're acting  
3           like we're forcing her to do the risk ratings."

4           Well, either they were telling her that  
5           she had to do the risk ratings or they weren't.  
6           Make up your mind, folks. Come up with a story  
7           and stick with it.

8           Now, Mr. Banks says, "Just because  
9           someone makes an accusation doesn't mean it's  
10          true."

11          I would say, yeah, just because you  
12          deny an accusation, that denial doesn't  
13          necessarily mean it's true either, otherwise we  
14          wouldn't be here. That's your job. You figure  
15          out who is telling the truth, who is credible  
16          and who is not.

17          Mr. Banks says, "Mr. Salmanson  
18          complains because you didn't give her a 30-day  
19          warning. Didn't have time to get a 30-day  
20          warning."

21          I never said that. I didn't say they  
22          had to give her a 30-day warning.

23          How about a talking to? How about a  
24          coaching on the sidelines? How about a one-day  
25          warning? How about "let's get the job done"?

1     How about, "Wanda, are you into it or aren't  
2     you? Is your head in the game?"

3             Mr. Banks said Mr. Speight didn't even  
4     testify that she said she thought it was race  
5     discrimination. Well, he wasn't asked. That  
6     wasn't why he was up there. He was talking  
7     about the emotional part. He could have asked  
8     him. He didn't. You can't take anything from  
9     that.

10            If Wanda Speight didn't think that  
11     discrimination had something to do with her  
12     lawsuit, then I don't know why any of us are  
13     here. Obviously, at some point she reached that  
14     conclusion, and she hired a great attorney to  
15     make sure that you guys understood it, too.

16            The other thing about that e-mail is  
17     that she sent it before she actually went into  
18     servicing, before she was given a job, before  
19     she was told to whom she was reporting, before  
20     she knew her responsibilities, before she knew  
21     her salary, before she had any direction or  
22     guidance from these people.

23            She said she had been upset by all of  
24     this, and now she could have taken an attached,  
25     emotional perspective. They make that sound

1 like it's horrible. No, she's saying, "I'm not  
2 going to be emotional. I'm going to ride it  
3 out, see what happens."

4 Bob Jones has told me, "You know what,  
5 stuff like this happens, Wanda, in transitions.  
6 Calm down, figure out what's going on. Keep  
7 your eye on the prize, your nose to the  
8 grindstone. Get the job done. Don't be  
9 emotional about it. Just go ahead and do it."

10 And that's exactly what she did.

11 May 23rd, she's given a list of  
12 assignments. May 24th, they are all done,  
13 (snapping finger) like that, every single thing  
14 on that checklist.

15 May 23rd, the horrible meeting. Have a  
16 six-page sheet. They were able to go down every  
17 single one, remember? There wasn't a single  
18 blank left out. It wasn't a blank. It was a  
19 question mark. "Do we go here or there?"

20 They couldn't have gotten that done  
21 without Wanda.

22 May 12th, a very constructive meeting.  
23 How do you have a very constructive meeting  
24 about how the assignments were going to be with  
25 someone who is detached, indifferent? She

1 wasn't indifferent. And the proof is on  
2 May 25th.

3 If she were indifferent, she would have  
4 said, yeah, I'll do the risk ratings. She had  
5 pride in her work. She knew what it took to get  
6 them done and how to get them done write.  
7 That's why she was paid \$500,000 the year  
8 before.

9 She wasn't indifferent. She stuck her  
10 neck out and said, guys, you know what? I've  
11 been screaming about this for weeks and days and  
12 now we're down to game time. Got three weeks to  
13 go and I still don't have anybody to help me  
14 out. I don't have confidence.

15 That sounds like the words of an  
16 indifferent person? That's a person who cares  
17 and cares deeply about her work.

18 Now, they keep saying -- Mr. Banks did  
19 it again, that here's an executive being paid  
20 \$600,000 so of course they expected her to do  
21 everything that she should do and be proactive,  
22 et cetera.

23 She wasn't being paid \$600,000. She  
24 had been paid \$600,000 for the excellent job she  
25 had done before exactly what she was trying to

1 accomplish now.

2 The truth of the matter is that she was  
3 being paid \$120,000 at that point. She might  
4 get the \$600,000 if she did a great job at the  
5 end of the next year.

6 She didn't even know what her bonus was  
7 going to be. They weren't paying her \$500,000.  
8 It was \$120,000.

9 They keep talking about  
10 Mr. Hohenleitner as the client. As if he's some  
11 outside person. Owe my God, you're embarrassing  
12 us to the public. I feel like I'm with my six  
13 year old in the grocery store when he has a  
14 temper tantrum. Don't embarrass me. This  
15 wasn't really a client. You heard Mr. Lipson  
16 say, you know what, this whole transition was to  
17 get everybody on the same team, working  
18 together, breaking down the walls, stop  
19 miscommunicating. She knew that.

20 She understood that because that's the  
21 way she had always operated. She had fostered  
22 an excellent working teamwork relationship with  
23 Mr. Hohenleitner. She had done -- she kept him  
24 in the loop because that's what she had always  
25 done and that's what she had been rewarded for



1 over and over and over again. She was a leader  
2 in breaking down those walls, being a team  
3 player.

4 She wasn't trying to shoot for the  
5 three pointers way out there to get those  
6 spotlights shining on her, passing the ball  
7 around, elbowing everybody at the sidelines,  
8 getting a job done. Let's get the basket.

9 At the end of the day, I'd like to use  
10 the word "racist" because that really is an ugly  
11 word and nobody likes to be thought of as a  
12 racist and you don't think of people as racist.

13 Racist isn't just putting a noose on  
14 the ceiling or wearing a robe and setting fire.  
15 Racism can happen in much more subtle ways.  
16 It's about discrimination. That's what this is  
17 about. Treating people differently, either in a  
18 broad way or a more subtle way, based on their  
19 skin color.

20 It's discrimination. It's about  
21 holding people to a different standard. It's  
22 about assuming that they're being insubordinate  
23 when they're not. It's about reading into tone,  
24 tenor, things that aren't even there. It's  
25 jumping the gun, right? It's about prejudice,

1 prejudging.

2 If there were ever a case you thought  
3 someone was prejudged, it's Wanda Speight,  
4 because what else did they have to judge her on?  
5 Not very much.

6 And I don't mean judging her on the  
7 facial statements of the e-mail. It's what they  
8 implied, how they read it, all the things they  
9 assumed in making that determination.

10 At the end of the day, you do have to  
11 answer this question. Ultimately, did  
12 Ms. Speight prove by a preponderance of the  
13 evidence that race wasn't the sole factor,  
14 wasn't the only factor, but a determinative  
15 factor in Capmark's decision to terminate her  
16 employment?

17 I think there are enough  
18 implausibilities and inconsistencies in their  
19 story. You can assume if they had the truth to  
20 tell, that it wasn't, they wouldn't have had to  
21 lie, change their story and do a cover-up, claim  
22 it was insubordination when it was not, claim it  
23 was a terrible thing to send it out to  
24 Mr. Hohenleitner when it wasn't.

25 Why do you have to do that, unless you

1 think or you know that race did have something  
2 to do with it.

3 Thank you very much.

4 THE COURT: Thank you, counsel.

5 Members of the jury, we're going to  
6 take a brief break before I instruct you on the  
7 law to apply in the case before you.

8 Please do not talk about the case among  
9 yourselves and we'll call you back in, in ten  
10 minutes. All right?

11 (Recess was held at 1:30 p.m.)

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C E R T I F I C A T I O N

CLOSING ARGUMENT PAGE NO.

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By Mr. Banks 24

REBUTTAL ARGUMENT

By Mr. Salmanson 48

I certify that the foregoing is a correct transcript from the record of the proceedings in the above-entitled matter.

DATE \_\_\_\_\_

Gregg B. Wolfe, R.P.R., C.M.